IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

DECARLOS MOORE **PLAINTIFF**

V. **NO. 4:14-CV-138-DMB-SAA**

MEDICAL, ET AL. **DEFENDANTS**

ORDER DENYING RECONSIDERATION

On February 2, 2016, this Court entered an Order of Dismissal dismissing this action for failure to state a claim upon which relief may be granted. Doc. #18 at 4. On February 25, 2016, Decarlos Moore filed a "Petition for Denovo [sic] Review," asking that this Court "reverse" its February 2 order and enter an order "where Plaintiff is able to proceed on a second § 1983 complaint against the Defendants, and present a claim upon which relief can be granted." Doc. #22.

I
Standard of Review

When a party seeks relief from a judgment or order, he may do so under Federal Rule of Civil Procedure 59(e) within twenty-eight days of entry of the order or judgment; or anytime under Rule 60(b). If, as here, the motion does not specify the procedural basis for relief and is filed within twenty-eight days of the relevant order or judgment, the Court will construe the motion as seeking relief under Rule 59(e). *See Clark v. Director, TDCJ-CID*, No. 2:10-cv-255, 2012 WL 1986443, at *1 (E.D. Tex. June 4, 2012) (citing *Shepherd v. Int'l Paper Co.*, 372 F.3d 326, 328 n.1 (5th Cir. 2004)).

Under Fifth Circuit jurisprudence:

> A Rule 59(e) motion "calls into question the correctness of a judgment." This Court has held that such a motion is not the proper vehicle for rehashing evidence,

> legal theories, or arguments that could have been offered or raised before the entry of judgment. Rather, Rule 59(e) "serve[s] the narrow purpose of allowing a party to correct manifest errors of law or fact or to present newly discovered evidence." Reconsideration of a judgment after its entry is an extraordinary remedy that should be used sparingly.

Templet v. HydroChem, Inc., 367 F.3d 473, 478–79 (5th Cir. 2004) (internal citations omitted). "A motion to alter or amend the judgment under Rule 59(e) must clearly establish either a manifest error of law or fact or must present newly discovered evidence and cannot be used to raise arguments which could, and should, have been made before the judgment issued." *Schiller v. Physicians Res. Grp. Inc.*, 342 F.3d 563, 567 (5th Cir. 2003) (internal quotation marks omitted).

II
Analysis

In his motion, Moore argues that the Court should have liberally construed his pleading and that, even if he had failed to state a claim, the Court "should have returned Plaintiff [sic] complaint during the initial screening process prior to a formal ruling ...." Doc. #22 at 2. In the alternative, Moore asks this Court to clarify whether the dismissal of his claims was with or without prejudice. *Id*. at 2–3.

First, for the reasons discussed in the Report and Recommendation and this Court's Order of Dismissal, Moore's complaint, even construed liberally, fails to state a claim. Furthermore, Moore cites no authority, and this Court is aware of none, which stands for the proposition that a Court must "return" a complaint to a prisoner before dismissal at the screening stage particularly where, as here, the prisoner has already amended the complaint. To the contrary, the Fifth Circuit has held that a district court is not required to provide a prisoner an opportunity to amend prior to a screening dismissal. *Politis v. Dyer*, 126 F. App'x 648, at *1 (5th Cir. 2005). Finally, the Court clarifies that the dismissal of Moore's complaint was with prejudice. *See Williams v. Recovery Sch. Dist.*, 859 F.Supp.2d 824, 833–34 (E.D. La. 2012) ("The Court DISMISSES with prejudice

Williams's claim for injunctive relief and his Title VII claims of race discrimination and retaliation against LDOE and BESE because Williams has failed to state a claim and has already been given an opportunity to amend his complaint.").

III
Conclusion

For the reasons above, Moore's motion for reconsideration [22] is **DENIED**.

SO ORDERED, this 1st day of June, 2016.

/s/ Debra M. Brown
UNITED STATES DISTRICT JUDGE